IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2599 of 2004
with
CIVIL APPLICATION No.8770 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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UNITED INDIA INSURANCE CO LTD
Versus
HEIRS OF DECD.BABUBHAI PUNABHAI BHADALIYA

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Appearance:
1. First Appeal No. 2599 of 2004
MS MEGHA JANI for Appellant
..... for Respondent No. 1
MR ANSHIN H DESAI for Respondent No. 1/1-1/3
RULE UNSERVED for Respondent No. 2
MS YAMINI J DESAI for Respondent No. 3
RULE SERVED for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 19/01/2005

ORAL JUDGEMENT

By filing this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), the appellant - United India Insurance Co. Ltd. seeks to challenge the order dated 15.6.2004 rendered below application Exh.6 in MACP No. 252 of 2003 by the MACT (Main), Junagadh, by which the application filed by respondent Nos. 1 to 3/original claimants under Section 140 of the Act to receive interim compensation of Rs.50,000 for untimely demise of Babubhai Punabhai Bhadaliya in a vehicular accident, came to be allowed, and thereby it is held that the original claimants are entitled to receive interim compensation of Rs.50,000 and the appellant is directed to pay Rs.50,000 as interim compensation within one month from the date of the order with running interest @ 9% per annum from the date of the main claim petition, jointly and severally with respondent Nos. 4, 5 and 6.

2. Respondent Nos. 1 to 3 are the claimants before the Tribunal in the claim petition filed under Section 166 of the Act to recover the compensation of Rs.2 lacs. As per the claim put forth by the claimants, on fateful date of 5.9.1999, at about 1.00 AM, deceased Babubhai Punabhai Bhadaliya boarded rickshaw bearing No. GJ-3-U-359 and the said Rickshaw met with an accident and as a result thereof Babubhai Punabhai Bhadaliya received injuries on his spleen and during the course of treatment Splenectomy was performed. As a result of the removal of the spleen, Babubhai Punabhai Bhadaliya suffered with Tuberculosis and ultimately he succumbed to the same during the course of treatment on 13.3.2000, that is after six months of the accident. Respondent Nos.1 to 3 being the heirs and legal representatives of the deceased Babubhai Punabhai Bhadaliya, filed claim petition to receive compensation of Rs.2 lacks. It is pleaded that the accident was the result of rash and negligent driving on the part of the Driver of the offending auto rickshaw and respondent Nos.5 and 6 being the owners of the said Rickshaw are liable to pay compensation. The said rickshaw is insured with the insurance company and therefore the insurance company is liable to indemnify the award which is passed against the insured. It is also pleaded that there is a nexus between the accident and the resultant death, as the spleen of deceased Babubhai Punabhai Bhadaliya was required to be removed during the course of treatment and on this ground the claim petition was filed to recover the compensation of Rs. 2 lacks together with interest and cost.

3. In the claim petition the claimants have also filed an application under Section 140 of the Act for recovery of Rs.50,000 by way of interim compensation.

4. The Tribunal after considering the FIR, injury certificate and also the insurance policy, came to the conclusion that the accident had occurred due to rash and negligent driving on the part of the driver of the offending rickshaw and respondent Nos. 4 and 5 being the owners are vicariously liable and therefore there was a nexus between the accidental injury and the resultant death, and therefore, the claimants are entitled to receive interim compensation of Rs.50,000 together with interest and cost, and accordingly, the Tribunal has awarded the said amount to the claimants by directing the appellant to deposit the said amount.

5. Ms. Megha Jani, learned advocate of the appellant has contended that it is true that the accident took place and in the said accident deceased Babubhai Punabhai Bhadaliya had received injuries but there is no nexus between the accidental injuries suffered by him and the resultant death and, therefore, the claimants are not entitled to receive interim compensation of Rs.50,000. She has further contended that unless the evidence is recorded, it is very difficult to jump to the conclusion that there was nexus between the accidental injuries and resultant death. Notwithstanding the fact, the Tribunal has decided that there is a nexus between the accidental injury and the resultant death which has resulted into miscarriage of justice and, therefore, according to her, the appeal deserves to be allowed by quashing and setting aside the impugned order. She, therefore, urged to allow this appeal.

6. Mr.Anshin H.Desai, learned advocate for respondent Nos. 1 to 3/original claimants has contended that there is ample and voluminous evidence to establish that deceased Babubhai Punabhai Bhadaliya had died, because, during the course of treatment Splenectomy was performed as result of the removal of spleen, deceased Babubhai Punabhai Bhadaliya suffered Tuberculosis and ultimately he succumbed to the same on 13.3.2000, during the course of treatment. As per medical jurisprudence once the spleen is removed, the resistance power of a person is reduced to a substantial extent and he is vulnerable to any disease and as a result of the removal of the spleen, deceased was attacked with the Tuberculosis which has ultimately claimed his life and therefore there was a nexus between the accidental injury and the resultant death. He, therefore, submitted that

there is no illegality in the impugned order passed by the Tribunal. He has further contended that the application filed by the claimants under Section 140 of the Act has to be decided by way of summary trial as envisaged under sub Rule (2) of Rule 231 of the Gujarat Motor Vehicles Rules, 1989 ('the Rules' for short) and the Tribunal has adopted the same procedure, therefore, there is no illegality in passing the impugned order. He, therefore, urged that the appeal lacks merit and deserves to be dismissed, and has prayed to dismiss the appeal.

7. I have considered the submissions advanced by Ms. Megha Jani, learned advocate of the appellant and Mr. Anshin H. Desai, learned advocate of respondent Nos. 1 to 3/original claimants. I have also perused the appeal memo, impugned order and the documents supplied by the learned advocates for the parties, during the course of their submissions, and the relevant provisions of the Act as well as Rules.

8. It may be noted that as per sub-Rule (5) of Rule 231 of the Rules, for the purpose of adjudicating the awarding claim, the Claims Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure, 1973. As per sub-Rule (2) of Rule 231 of the Rules, the claimant has to produce the following documents alongwith the claim application:

(i) First Information Report.
(ii) Injury certificate or post mortem report in case of death.
(iii) Heirship certificate in case of death.
(iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident.
(v) Particulars of insurance of the vehicle involved in the accident.

9. It may be appreciated that the amount awarded under 'No Fault Liability' Principle, that is, under Section 140 of the Act, is an interim compensation and obviously it is subject to the adjustment against the final award that will be passed in MACP which is still pending before the Tribunal. This principle is established by the Supreme Court in the case of the ORIENTAL INSURANCE CO. LTD. V. HANSRAJBHAI V KODALA, 2001 (4) JT 477.

10. On having perusal of the order, there is no manner of doubt that on fateful day when the deceased

boarded rickshaw, due to rash and negligent driving on the part of its driver, he met with an accident and in the said accident he received injuries, and he was immediately removed to General and QMS Hospital, Junagadh. Certificate dated 6.9.1999 unequivocally states that Splenectomy was done, and on the next day of the accident the spleen was removed. It is settled principle of medical jurisprudence that once the spleen is removed, the resistance power of the person concerned is diminished to a substantial extent. As per the certificate dated 3.3.2000 the deceased was suffering from Tuberculosis and during treatment he died on 13.3.2000.

11. In aforesaid view of the matter, prima facie, there is a reason to believe that on account of removal of the spleen, the resistance power of the deceased was diminished to a substantial extent and as a result thereof deceased was attacked by Tuberculosis and ultimately he succumbed to the same. It may be noted that as mentioned earlier, the application filed under Section 140 of the Act is to be decided as per sub rule 2 of Rule 231 of the Rules and the Tribunal has to follow the procedure of summary trial as contained in chapter XX1 of the Code of Criminal Procedure, 1973, therefore, at the time of deciding the application under Section 140 of the Act, there is no scope to lead any further evidence.

12. In aforesaid view of the matter, the contention advanced by Ms. Megha Jani, learned advocate of the appellant, cannot be considered at this interim stage in view of the fact that such a contention can be raised in the main substantive claim petition which is still pending before the Tribunal. If the appellant raises such a contention before the Tribunal, the Tribunal shall decide the same in accordance with law at the end of the trial.

13. In view of the aforesaid state of affairs, I do not see any justifiable ground or valid reason to interfere with the impugned order at this stage. However, with a view to safeguard the interest of the appellant, an undertaking of the claimants is required to be obtained so that the claimants shall not abandon the main claim petition and withdraw the amount with a view to fritter away the amount of compensation of Rs.50000/with interest thereon which is awarded in his favour.

14. In this view of the matter, it is directed that

the original claimants shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimants shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award that will be passed in the main claim petition. On the undertaking being filed by the claimants, as aforesaid, the amount under the impugned order may be permitted to be withdrawn by the original claimants on furnishing security to the satisfaction of the Tribunal on the terms and conditions of the impugned order.

15. Subject to the aforesaid observations and directions, the appeal is dismissed with no order as to costs.

16. The amount deposited in the appeal, if any, with the registry is directed to be transmitted to the Tribunal forthwith.

17. Since the appeal is dismissed, the above numbered Civil Application does not assume any survival value and hence the same is also dismissed with no order as to costs. Rule is discharged.

(A.M.Kapadia,J)

Jayanti*